

SENATE BILL 53  
EMERGENCY BILL

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SB 629/02 - JPR

2003 Regular Session  
3r0319

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By: **Senators Frosh, Britt, Conway, Exum, Gladden, Green, Grosfeld,  
Hughes, Kelley, Lawlah, Pinsky, and Teitelbaum**

Introduced and read first time: January 17, 2003

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 11, 2003

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Death Penalty - Sentencing - Standard of Proof**

3 FOR the purpose of altering the standard of proof used in a certain phase of the  
4 sentencing proceeding in a capital case trial; providing for the application of this  
5 Act; making this Act an emergency measure; and generally relating to death  
6 sentencing proceedings.

7 BY repealing and reenacting, without amendments,  
8 Article - Criminal Law  
9 Section 2-303(f), (g), and (h)  
10 Annotated Code of Maryland  
11 (2002 Volume)

12 BY repealing and reenacting, with amendments,  
13 Article - Criminal Law  
14 Section 2-303(i)  
15 Annotated Code of Maryland  
16 (2002 Volume)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
18 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Criminal Law**

2 2-303.

3 (f) (1) After the evidence is presented to the jury in the sentencing  
4 proceeding, the court shall:

5 (i) give any appropriate instructions allowed by law; and

6 (ii) instruct the jury as to:

7 1. the findings that the jury must make to determine  
8 whether the defendant shall be sentenced to death, imprisonment for life without the  
9 possibility of parole, or imprisonment for life; and10 2. the burden of proof applicable to the findings under  
11 subsection (g)(2) or (i)(1) and (2) of this section.12 (2) The court may not instruct the jury that the jury is to assume that a  
13 sentence of life imprisonment is for the natural life of the defendant.14 (g) (1) In determining a sentence under subsection (b) of this section, the  
15 court or jury first shall consider whether any of the following aggravating  
16 circumstances exists beyond a reasonable doubt:17 (i) one or more persons committed the murder of a law  
18 enforcement officer while the officer was performing the officer's duties;19 (ii) the defendant committed the murder while confined in a  
20 correctional facility;21 (iii) the defendant committed the murder in furtherance of an  
22 escape from, an attempt to escape from, or an attempt to evade lawful arrest, custody,  
23 or detention by:

24 1. a guard or officer of a correctional facility; or

25 2. a law enforcement officer;

26 (iv) the victim was taken or attempted to be taken in the course of  
27 an abduction, kidnapping, or an attempt to abduct or kidnap;28 (v) the victim was a child abducted in violation of § 3-503(a)(1) of  
29 this article;30 (vi) the defendant committed the murder under an agreement or  
31 contract for remuneration or promise of remuneration to commit the murder;32 (vii) the defendant employed or engaged another to commit the  
33 murder and the murder was committed under an agreement or contract for  
34 remuneration or promise of remuneration;

1 (viii) the defendant committed the murder while under a sentence of  
2 death or imprisonment for life;

3 (ix) the defendant committed more than one murder in the first  
4 degree arising out of the same incident; or

5 (x) the defendant committed the murder while committing, or  
6 attempting to commit:

7 1. arson in the first degree;

8 2. carjacking or armed carjacking;

9 3. rape in the first degree;

10 4. robbery under § 3-402 or § 3-403 of this article; or

11 5. sexual offense in the first degree.

12 (2) If the court or jury does not find that one or more of the aggravating  
13 circumstances exist beyond a reasonable doubt:

14 (i) it shall state that conclusion in writing; and

15 (ii) a death sentence may not be imposed.

16 (h) (1) In this subsection, "crime of violence" means:

17 (i) abduction;

18 (ii) arson in the first degree;

19 (iii) carjacking or armed carjacking;

20 (iv) escape in the first degree;

21 (v) kidnapping;

22 (vi) mayhem;

23 (vii) murder;

24 (viii) rape in the first or second degree;

25 (ix) robbery under § 3-402 or § 3-403 of this article;

26 (x) sexual offense in the first or second degree;

27 (xi) manslaughter other than involuntary manslaughter;

28 (xii) an attempt to commit any crime listed in items (i) through (xi)  
29 of this paragraph; or

1 (xiii) the use of a handgun in the commission of a felony or other  
2 crime of violence.

3 (2) If the court or jury finds beyond a reasonable doubt that one or more  
4 of the aggravating circumstances under subsection (g) of this section exist, it then  
5 shall consider whether any of the following mitigating circumstances exists based on  
6 a preponderance of the evidence:

7 (i) the defendant previously has not:

8 1. been found guilty of a crime of violence;

9 2. entered a guilty plea or a plea of nolo contendere to a  
10 charge of a crime of violence; or

11 3. received probation before judgment for a crime of violence;

12 (ii) the victim was a participant in the conduct of the defendant or  
13 consented to the act that caused the victim's death;

14 (iii) the defendant acted under substantial duress, domination, or  
15 provocation of another, but not so substantial as to constitute a complete defense to  
16 the prosecution;

17 (iv) the murder was committed while the capacity of the defendant  
18 to appreciate the criminality of the defendant's conduct or to conform that conduct to  
19 the requirements of law was substantially impaired due to emotional disturbance,  
20 mental disorder, or mental incapacity;

21 (v) the defendant was of a youthful age at the time of the murder;

22 (vi) the act of the defendant was not the sole proximate cause of the  
23 victim's death;

24 (vii) it is unlikely that the defendant will engage in further criminal  
25 activity that would be a continuing threat to society; or

26 (viii) any other fact that the court or jury specifically sets forth in  
27 writing as a mitigating circumstance in the case.

28 (i) (1) If the court or jury finds that one or more of the mitigating  
29 circumstances under subsection (h) of this section exists, it shall determine [by a  
30 preponderance of the evidence] BEYOND A REASONABLE DOUBT whether the  
31 aggravating circumstances under subsection (g) of this section outweigh the  
32 mitigating circumstances.

33 (2) If the court or jury finds that the aggravating circumstances:

34 (i) outweigh the mitigating circumstances, a death sentence shall  
35 be imposed; or

1 (ii) do not outweigh the mitigating circumstances, a death sentence  
2 may not be imposed.

3 (3) If the determination is by a jury, a decision to impose a death  
4 sentence must be unanimous and shall be signed by the jury foreperson.

5 (4) A court or jury shall put its determination in writing and shall state  
6 specifically:

7 (i) each aggravating circumstance found;

8 (ii) each mitigating circumstance found;

9 (iii) whether any aggravating circumstances found under subsection  
10 (g) of this section outweigh the mitigating circumstances found under subsection (h)  
11 of this section;

12 (iv) whether the aggravating circumstances found under subsection  
13 (g) of this section do not outweigh the mitigating circumstances found under  
14 subsection (h) of this section; and

15 (v) the sentence determined under subsection (g)(2) of this section  
16 or paragraphs (1) and (2) of this subsection.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
18 construed to apply only prospectively and may not be applied or interpreted to have  
19 any ~~effect~~ effect on or application to any case in which a sentence of death has been  
20 imposed before the effective date of this Act.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an  
22 emergency measure, is necessary for the immediate preservation of the public health  
23 or safety, has been passed by a ye and nay vote supported by three-fifths of all the  
24 members elected to each of the two Houses of the General Assembly, and shall take  
25 effect from the date it is enacted.